IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9249 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDJI BHIMAJI VANJARA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

#. District Magistrate, Banaskantha at Palanpur, passed an order on October 2, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenue under the provisions of the PASA Act.

#. The detaining authority took into consideration 8 prohibition cases registered against the detenue.

Statements of 4 anonymous witnesses in respect of whom, privilege under section 9(2) of the PASA Act has been exercised by the detaining authority. The authority considered that the detenue is a "bootlegger", that his activities are detrimental to public order and therefore, he is required to be immediately prevented by detaining him under the PASA Act.

2.1 The detaining authority while considering the statements of anonymous witnesses observed that the powers under section 9(2) are required to be exercised in public interest as people at large are afraid of the detenue and are not prepared to give evidence against the detenue as their person and property is at risk and therefore, their identity is required to be kept secret.

#. Ms. Patel, learned advocate for the petitioner submitted that the detaining authority exercised powers under section 9(2) of the PASA Act without recording subjective satisfaction for the need for exercise of these powers in public interest. There is nothing to indicate that the fear expressed by the witnesses qua the detenue was found to be genuine by the detaining authority and therefore, the exercise of powers under section 9(2) of the PASA is improper and has resulted into infringement of right of the detenue of making an effective representation. The petition may therefore, be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. It is evident from plain reading of grounds of detention that the detaining authority has not even recorded its satisfaction about the genuineness and correctness of the fear expressed by the witnesses qua the detenue. The authority has also not recorded its subjective satisfaction for the need for exercise of powers under section 9(2) in public interest and on perusal of the statements, it is found that the detaining authority has not verified the statements of the witnesses at all. Considering the contents, language employed and the tenor of the grounds of detention, it cannot be said that the detaining authority has exercised the powers under section 9(2) of the PASA Act after being satisfied about the need for exercise of these powers in public interest. In the absence of such subjective satisfaction, the authority could not have claimed privilege of not disclosing the identity of the witnesses. This non-disclosure of identity of witnesses has resulted into infringement of right of the detenue of

making an effective representation. The order of detention, therefore, would stand vitiated on this ground and the petition therefore, deserves to be allowed.

#. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated October 2, 1999, is hereby quashed and set aside. The detenue - Govindji Bhimaji Vanjara, is ordered to be set at liberty forthwith, if not required in any other matter. Rule made absolute with no orders as to costs.

#. Ms. Patel states that the detenue has been transferred to Baroda Prison. The writ therefore, be sent to Central Prison, Baroda.

[A.L. DAVE, J.]

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